



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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July 21, 2011

Dr. Roy E. Crabtree
Regional Administrator
Southeast Regional Office
National Oceanic and Atmospheric Administration
263 13th Avenue South
St. Petersburg, Florida 33701

Subject: EPA NEPA Review Comments on NOAA's DEIS for "Reef Fish Amendment 32, Gag - Rebuilding Plan, Annual Catch Limits, Management Measures, Red Grouper - Annual Catch Limits, Management Measures, Grouper Accountability Measures, Gulf of Mexico"; CEQ #20110177

Dear Dr. Crabtree:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject National Oceanic and Atmospheric Administration (NOAA) Draft Environmental Impact Statement (DEIS) in accordance with our responsibilities under Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. EPA understands that the purpose and need for Amendment 32 is to address the overfishing of gag and develop a stock rebuilding plan in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and to modify the red grouper catch limits in response to the improved status of the stock.

It is our understanding that NOAA proposes 7 actions within the DEIS which include: 1) rebuilding plan for the gag stock; 2) establishing or modifying recreational bag limits, size limits, and closed seasons for gag and red grouper; 3) applying commercial gag quota adjustments to account for dead discards; 4) adjusting multi-use individual fishing quota shares (allocation); 5) changing the commercial gag size limit; 6) establishing time and area closures; 7) and modifying current gag, red grouper, and shallow-water grouper accountability measures.

EPA has a responsibility to review and comment on major Federal actions significantly affecting the quality of the human environment, including Fishery Management Plans (FMPs) and FMP Amendments (Amendments) as developed, approved, and implemented under the MSA where those Plans and Amendments are subject to the EIS requirement of NEPA, but it should be clear that we defer to NOAA and the Councils as to the development of fishery statistics and the relative importance of the commercial and recreational fisheries for each species.

EPA appreciates that several alternatives for proposed actions were presented and that preferred alternatives were identified in the DEIS. Based on our review, we offer the

following comments for the preferred alternatives for the 7 actions covered within the DEIS.

Actions and Alternatives:

Action – 1: Rebuilding Plan for Gag

Under the preferred alternative for Action 1 the Council proposes to establish a rebuilding plan for the gag that will rebuild the stock to a level consistent with producing maximum sustainable yield in 10 years or less. EPA notes that as required by the MSA, the Council must implement a fishery management plan that aims to rebuild overfished stocks to healthy, sustainable levels within 10 years. As we have suggested in previous NEPA comment letters, EPA supports an increased rate recovery for the overfished fishery resource. However, if these actions substantively impact societal issues (particularly if minority or low-income fishers (i.e., environmental justice populations) are disproportionately affected), this should be considered in the decision-making process. EPA is pleased that the Council will be implementing management strategies that could rebuild the stock within 7 years, which would allow for additional time to achieve the management target date of 10 years.¹

Action 2: Recreational Bag Limits, Size Limits, and Closed Seasons for Gag/Red Grouper

Under the preferred alternative for Action 2.1 the Council proposes a longer open season (June 1 - October 31) and sets a 22-30 inch slot size limit, 2 fish gag bag limit, and 4 fish aggregate bag limit. Under the preferred alternative for Action 2.2 the Council proposes an increase in the red grouper bag limit to 4 fish per person and proposes adaptive management tools that will allow for reductions in the bag limit if the annual catch limit is exceeded. We defer to NOAA and the Council when setting recreational bag limits, size limits, and closed seasons for the Gag/Red Grouper.

Action 3: Commercial Gag and Shallow-water Grouper Quota Adjustments to Account for Dead Discards

Under the preferred alternative for Action 3 the Council proposes to reduce the gag commercial quota to 86% of the ACT to compensate for dead discards not being reduced to projected levels needed to achieve 100% of the ACT. EPA appreciates NOAA and the Council's efforts to adjust quotas to address the issue of dead discards. While EPA supports this effort, we do recommend that the Council provide additional information and justification in section 2.3 of the FEIS for using 86% of the ACT to account for dead discards.

Action 4: Adjustments to Multi-use IFQ Shares

Under the preferred alternative for Action 4 the Council proposes to set the percentage of red grouper IFQ allocation converted into multi-use allocation equal to zero. Once NOAA Fisheries declares the gag rebuilt, set the percentage of red grouper IFQ allocation converted into multi-use allocation as follows:

¹ p. 23

$$\text{Red Grouper Multi-use (in percent)} = 100 * [\text{Gag ACL} - \text{Gag Allocation}] / \text{Red Grouper Allocation}$$

The red grouper multi-use percentage will be recalculated following adjustments in commercial gag ACL, gag allocation, or red grouper allocation. Although we defer to NOAA and the Council when setting adjustments to the multi-use IFQ shares, we do request that the FEIS better define the “buffer” as described in the following statement in the DEIS.

After the gag stock is fully rebuilt, the percentage of red grouper allocation converted into red grouper multi-use allocation valid to harvest red or gag grouper would be determined based on the buffer existing between the gag annual catch limit and individual fishing quota allocation and on the magnitude of the red grouper annual catch limit.²

In addition, as we have stated in past comment letters, we find it somewhat unclear how multiuse IFQ shares would benefit the fishery since allocations can be used for more than one species. We recommend that additional information and clarification be provided in the FEIS regarding how multiuse IFQ shares benefit the gag and red grouper fisheries.

Action 5: Commercial Gag Size Limit

Under the preferred alternative for Action 5 the Council proposes to reduce the commercial gag minimum size limit to 22 inches total length. EPA notes that Table 2.5.1 indicates a dramatic increase in gag dead discards from 1990 – 2008. It is suggested in the DEIS that an increase in the commercial minimum size limit from 20 inches to 24 inches lead to significant increases in dead discards. It would seem plausible that increasing fishing effort and efficiency has occurred over this same period. We would recommend that the FEIS include additional discussion of the causes of the significant increases in dead discards seen in Table 2.5.1 over the past 18 years. EPA also notes that the commercial minimum size limit proposed by the Council would match the current recreational minimum size limit, and we concur that this would provide for a more uniform enforceable size limit across both sectors.

Action 6: Time and Area Closures

More than one alternative and option can be selected as preferred alternative for Action 6. Based on information provided in the DEIS discard mortality increases with increase depths³ (i.e. the deeper the fish is caught the less likely it will survive release). EPA agrees with the Council that focusing closure areas on deeper waters should reduce bycatch mortality of gag. Although we defer to NOAA and the Council when setting the time and area closures for the gag, we do suggest that the same level of information regarding the benefits of the area closures be provided for the proposed seasonal closures in the FEIS.

² p. 35-36

³ p. 47

Action 7: Gag, Red Grouper, and Shallow-water Grouper Accountability Measures

Under the preferred alternative for Action 7.1, the Council proposes accountability measures for the gag, red grouper and shallow-water grouper commercial sector that will be the current individual fishing quota program. Under the preferred alternative for Action 7.2, the Council proposes to add an overage adjustment to be applied when gag or red grouper are considered overfished and in-season accountability measures to close a season early if needed to the existing gag and red grouper accountability measures. We defer to NOAA and the Council when setting gag, red grouper, and shallow-water grouper accountability measures.

General Comments:

Environmental Justice

Although proposed FMPs/Amendments are implemented for the sake of recovering the fishery, they can have societal effect on fishers. These affects can be equally or unequally distributed among fishers. Section 3.3.3 states that:

although some communities expected to be affected by this proposed rule may reside in counties that have minority or economic profiles that exceed the EJ thresholds and, therefore, constitute areas of concern, no EJ issues have been identified or are expected to arise⁴

It appears that no EJ issues have been identified by the Council based on the following information:

- Estimated State Demographics:
 - Minority (non-whites including Hispanics) – 38.7%
 - Below Poverty Line – 12.6%
- EJ Threshold of 1.2 the State Average Demographics:
 - Minority Threshold – 46.4%
 - Poverty Line Threshold – 15.1%

The EJ analysis estimates that Pinellas County does not meet the minority or poverty line thresholds. While this may be true, EPA is concerned that Pinellas County may not be the best representation of the actual impacted community, primarily the fishers in this case. In addition, we are concerned that no other Counties along the west coast of Florida are included in this analysis. It is further stated in the DEIS that “Additional communities beyond those profiled above would be expected to be affected by the actions in this proposed rule”⁵ yet no additional analysis is included for these other communities. EPA recommends that the FEIS include a more detailed EJ analysis which includes all the potential impacted communities.

⁴ p. 69

⁵ p. 71

Public Participation – It is important to incorporate and discuss public participation activities related to EJ and the proposed action. There is no discussion of the public participation process related to EJ communities in the DEIS. In addition, it is not clear that representatives of EJ communities were involved or that any issues they have were identified. EPA recommends more EJ specific outreach efforts for these public participation opportunities in the future.

Color Figures and Tables in DEIS

EPA found figures and tables in the DEIS copies delivered to the Region very difficult to review. Several figures and tables required color copies to interpret. EPA was able to download a pdf version off the Council's website for review. For future documents, please provide color copies of maps and figures that require color to interpret.

EPA DEIS Rating:

Although some clarification comments were offered for this DEIS, EPA generally supports NOAA and the Councils on Amendment 32 and gives deference to their fishery expertise. Therefore, EPA rates this DEIS as "LO" (Lack of Objections). Nevertheless, we request that NOAA and the Councils directly respond to our comments in a dedicated section of the FEIS.

EPA appreciates the opportunity to review the DEIS. Should NOAA have questions regarding our comments on the Amendment actions, please feel free to contact Dan Holliman at 404/562-9531 or holliman.daniel@epa.gov and for EJ comments please contact Ntale Kajumba at 404/562-9620 or kajumba.ntale@epa.gov of my staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Holliman", with the word "for" written below it.

Heinz J. Mueller
Chief, NEPA Program Office
Office of Policy and Management